that the individual will, if he meets the substantial presence or green card test in 1985, be considered a resident of the United States as of January 1, 1985, regardless of when the individual was first present in the United States in 1985.

(2) *Substantial presence test-years included.* For purposes of applying the substantial presence test for calendar years 1985 and 1986, days of presence in 1984 will only be counted for aliens who had been residents under prior law (§§ 1.871–2 through 1.871–5 of this chapter) at the end of calendar year 1984. Days of presence in 1983 will only be counted for aliens who had been residents under prior law at the end of both calendar year 1983 and 1984.

(3) *Professional athletes.* For purposes of applying the substantial presence test, only days of presence in the United States after October 22, 1986, shall be excluded for individuals described in § 301.7701(b)–3(b)(5) (professional athletes).

(4) *Procedural rules and filing requirements.* The procedural rules and filing requirements described in §§ 301.7701(b)–7(b) and 301.7701(b)–8 shall apply to taxable years beginning after December 31, 1991.

(5) *Possessions and territories.* For purposes of applying section 7701(b) and the regulations under that section, § 301.7701(b)–1(d) applies to taxable years ending after April 9, 2008.

[T.D. 8411, 57 FR 15253, Apr. 27, 1992, as amended by T.D. 9391, 73 FR 19377, Apr. 9, 2008]

§ 301.7701(i)–0 Outline of taxable mortgage pool provisions.

This section lists the major paragraphs contained in §§ 301.7701(i)–1 through 301.7701(i)–4.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) Purpose.
(b) In general.
(c) Asset composition tests.
(1) Determination of amount of assets.
(2) Substantially all.
(i) In general.
(ii) Safe harbor.
(3) Equity interests in pass-through arrangements.
(4) Treatment of certain credit enhancement contracts.
(i) In general.
(ii) Credit enhancement contract defined.
(5) Certain assets not treated as debt obligations.
(i) In general.
(ii) Safe harbor.
(A) In general.
(B) Payments with respect to a mortgage defined.
(C) Entity treated as not anticipating payments.
(d) Real estate mortgages or interests therein defined.
(1) In general.
(2) Interests in real property and real property defined.
(i) In general.
(ii) Manufactured housing.
(3) Principally secured by an interest in real property.
(i) Tests for determining whether an obligation is principally secured.
(A) The 80 percent test.
(B) Alternative test.
(ii) Obligations secured by real estate mortgages (or interests therein), or by combinations of real estate mortgages (or interests therein) and other assets.
(A) In general.
(B) Example.
(e) Two or more maturities.
(1) In general.
(2) Obligations that are allocated credit risk unequally.
(3) Examples.
(f) Relationship test.
(1) In general.
(2) Payments on asset obligations defined.
(3) Safe harbor for entities formed to liquidate assets.
(g) Anti-avoidance rules.
(1) In general.
(2) Certain investment trusts.
(3) Examples.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) Portion defined.
(b) Certain assets and rights to assets disregarded.
(1) Credit enhancement assets.
(2) Assets unlikely to service obligations.
(3) Recourse.
(c) Portion as obligor.
(1) In general.
(2) Example.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) Effective dates.
(b) Entities in existence on December 31, 1991.
(1) In general.
(2) Special rule for certain transfers.
(3) Related debt obligation.
(4) Example.
(c) Duration of taxable mortgage pool classification.

[T.D. 8610, 60 FR 40088, Aug. 7, 1995]

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) *Purpose.* This section provides rules for applying section 7701(i), which defines taxable mortgage pools. The purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities. The regulations in this section and in §§ 301.7701(i)–2 through 301.7701(i)–4 are to be applied in accordance with this purpose. The taxable mortgage pool provisions apply to entities or portions of entities that qualify for REMIC status but do not elect to be taxed as REMICs as well as to certain entities or portions of entities that do not qualify for REMIC status.

(b) *In general.* (1) A taxable mortgage pool is any entity or portion of an entity (as defined in § 301.7701(i)–2) that satisfies the requirements of section 7701(i)(2)(A) and this section as of any testing day (as defined in § 301.7701(i)–3(c)(2)). An entity or portion of an entity satisfies the requirements of section 7701(i)(2)(A) and this section if substantially all of its assets are debt obligations, more than 50 percent of those debt obligations are real estate mortgages, the entity is the obligor under debt obligations with two or more maturities, and payments on the debt obligations under which the entity is obligor bear a relationship to payments on the debt obligations that the entity holds as assets.

(2) Paragraph (c) of this section provides the tests for determining whether substantially all of an entity's assets are debt obligations and for determining whether more than 50 percent of its debt obligations are real estate mortgages. Paragraph (d) of this section defines real estate mortgages for purposes of the 50 percent test. Paragraph (e) of this section defines two or more maturities and paragraph (f) of this section provides rules for determining whether debt obligations bear a relationship to the assets held by an entity. Paragraph (g) of this section provides anti-avoidance rules. Section 301.7701(i)–2 provides rules for applying section 7701(i) to portions of entities and § 301.7701(i)–3 provides effective dates. Section 301.7701(i)–4 provides special rules for certain entities. For purposes of the regulations under section 7701(i), the term entity includes a portion of an entity (within the meaning of section 7701(i)(2)(B)), unless the context clearly indicates otherwise.

(c) *Asset composition tests*—(1) *Determination of amount of assets.* An entity must use the Federal income tax basis of an asset for purposes of determining whether substantially all of its assets consist of debt obligations (or interests therein) and whether more than 50 percent of those debt obligations (or interests) consist of real estate mortgages (or interests therein). For purposes of this paragraph, an entity determines the basis of an asset with the assumption that the entity is not a taxable mortgage pool.

(2) *Substantially all*—(i) *In general.* Whether substantially all of the assets of an entity consist of debt obligations (or interests therein) is based on all the facts and circumstances.

(ii) *Safe harbor.* Notwithstanding paragraph (c)(2)(i) of this section, if less than 80 percent of the assets of an entity consist of debt obligations (or interests therein), then less than substantially all of the assets of the entity consist of debt obligations (or interests therein).

(3) *Equity interests in pass-through arrangements.* The equity interest of an entity in a partnership, S corporation, trust, REIT, or other pass-through arrangement is deemed to have the same composition as the entity's share of the assets of the pass-through arrangement. For example, if an entity's stock interest in a REIT has an adjusted basis of $20,000, and the assets of the REIT consist of equal portions of real